IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18..04..2006

C O R A M

The Honourable Mr. A.P.SHAH, THE CHIEF JUSTICE
and
The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Appeal Nos.415 and 416 of 2006
Writ Petition No.1787 of 2006

Chairman & Managing Director,
M/s. Metal Box India Ltd.,
Allahabad Bank Building,
II Floor, 17, Parliament Street,
New Delhi-110 001. .. Appellant in WAs.

Metal Box Company Workers' Union
(Regd. No.179/TVR), rep. by its President,
No.25/13, 3rd Street, Jeeva Nagar,
New Washermenpet, Chennai-81. .. Writ Petitioner

Versus

1. Metal Box Company Workers Union
(Regd. No.179/TVR), rep. by its
President No.25/13,
3rd Street, Jeeva Nagar,
New Washermenpet,
Chennai-81.

2. The Government of Tamil Nadu,
rep. by its Secretary to Government,
Labour and Employment Department,
Fort St. George,
Chennai-9.

3. The Commissioner of Labour,
Labour Welfare Building,
D.M.S. Compound,
Chennai-6.

4. A.Ramalingam,
Joint Commissioner of Labour,
Labour Welfare Building,
D.M.S. Compound,
Chennai-6.

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5. Metal Box Company Employees Union
(Regd. No.185), rep. by its General
Secretary No.185-A,
Thiagarajapuram Thangal,
Thiruvottiyur, Chennai-19.

6. The Board for Industrial and Financial
Reconstruction, rep. by the Registrar,
Jawhar Vyapar Bhavan,
1, Tolstoy Marg, Janpat,
New Delhi-110 001.

7. ICICI Bank Limited,
ICICI Towers, Bandra,
Kurla Complex,
Mumbai-400 020. .. Respondents in W.As.

8. The Government of Tamilnadu
rep. by its Secretary to Government
Labour and Employment Department
Fort St.George, Chennai-600 009.

9. The Commissioner of Labour
Labour Welfare Building
D.M.S. Compound, Chennai-600 006.

10. Mr.A.Ramalingam
Joint Commissioner of Labour
Labour Welfare Building
D.M.S.Compound
Chennai-600 006.

11. The Chairman and Managing Director
M/S.Metal Box India Ltd.,
Allahabad Bank Building
II Floor, 17, Parliament Street
New Delhi-110 001.

12. Metal Box Company Employees Union
(Regn.No.185)
Rep. By its General Secretary
No.185-A, Thiyagarajapuram
Thangal, Thiruvottiyur
Chennai-600 019.

13. The Board for Industrial and Financial
Reconstruction, rep. by the Registrar
Jawahar Vyapar Bhavan, 1, Tolstoy Marg,
Janpath, New Delhi-110 001.

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14. ICICI Bank Limited
ICICI Towers, Bandra
Kurla Complex,
Mumbai-400 020. Respondents 8 to 14 in WP.

Prayer : Writ Appeals filed under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 21.3.2006 passed in W.P.M.P.No.2041 and W.V.M.P.No.259 of 2006 in W.P.No.1787 of 2006.

WP.No.1787/2006 presented under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records from the files of the 3rd respondent pertaining to the settlement dated 18.1.2006 arrived at under section 12(3) of the Industrial Dispute Act 1947 with respondents 4 and 5 herein and to quash the same.

For Appellants in W.A. No.415/2006 } Mr.Jatinder Sethi, Senior Counsel for M/s. Niveditha

For Appellants in W.A. No.416/2006 } Mr.R.Thiagarajan, Senior Counsel for M/s. Niveditha

For Respondent-1 : Mr.N.G.R.Prasad for Mr.K.M.Ramesh
For Respondents-2&3 : Mr.V.Raghupathi, Govt. Pleader
For Respondent-5 : Mr.AR.L.Sundaresan, Senior Counsel for Mr.V.C.Janardhanan

For Respondent-7 : Mr.N.R.Chandran, Senior Counsel for Mrs.Rita Chandrasekaran

J U D G M E N T

(Judgment of the Court delivered by Prabha Sridevan, J.)

These writ appeals are filed against the orders of the learned single Judge granting interim stay of the impugned settlement dated 18.1.2006 entered into between the appellant and the fifth respondent on the prayer made by the first respondent herein. The facts of the matter have been dealt with in detail by the learned single Judge and therefore, we will only refer to the important facts.

2. Mr.N.G.R.Prasad, learned counsel appearing for the writ petitioner/first respondent submitted that in the event of this Court coming to the conclusion that the stay deserves to be vacated, nothing would survive in the writ petition and therefore requested that the writ petition itself be taken up for disposal.

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3. The appellant-Company was declared as a sick company by order dated 27.5.1988 by the Board of Industrial and Financial Reconstruction (BIFR) and the third respondent was appointed as the operating agency. Originally, there were three Unions - the first respondent-Union, the fifth respondent-Union and another Union by name the Metal Box Company Staff Association. But now, the Metal Box Staff Association has merged with the fifth respondent-Union. So, as far as we are concerned, there are only two Unions, the first respondent-Union being the minority Union. The appellant-Company is a multi-Unit company and we are concerned with the Chennai unit. Though a rehabilitation scheme was sanctioned by the BIFR on 10.6.1996, the matter went to the Supreme Court and finally, after hearing all parties concerned, the BIFR sanctioned the updated rehabilitation scheme by order dated 18.8.2000 and directed the third respondent to prepare the scheme provisions.

4. The aforementioned scheme provided for sale of the appellant/Unit as an on-going Unit with its liabilities. The members of the fifth respondent-Union and the Metal Box Company Staff Association indicated that they would prefer to have a fair and reasonable settlement rather than re-employment in the company. In July 2005, notices were issued by the Labour Department to the Unions to attend the conciliation proceedings. On 28.11.2005, a settlement under Section 18(1) of the Industrial Disputes Act was entered into between the appellant, the fifth respondent and the Metal Box Company Staff Association. Thereafter, the conciliation proceedings continued, and after giving due opportunity to the first respondent-Union to participate in the signing of the settlement under Section 12(3) of the Act, the fourth respondent, after having satisfied himself of the majority status of the impugned settlement, finalized the impugned settlement under Section 12(3). Approximately, a sum of Rupees Five Crores was envisaged to be paid in aggregate to the employees as per the terms of the settlement.

5. On behalf of the first respondent-Union, it was alleged that the fourth respondent had acted mala fide and had not actively engaged himself in deciding whether the settlement was fair and reasonable and had instead, merely repeated verbatim, the terms of the 18(1) settlement entered into between the fifth respondent-Union and the appellant-Company. It is next contended that the Chennai Unit of the Company having been closed, the provisions of Section 25-O of the Industrial Disputes Act, which are mandatory, ought to have been complied with, but they had been violated. It is also submitted that the first respondent-Union was not given an opportunity by the fourth respondent to express its objections. For the above reasons, it was submitted that the first respondent-Union is justified in approaching this Court under Article 226 of the Constitution of India.

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6. On behalf of the appellant-Company, it was submitted that if the first respondent-Union had any grievance, the proper recourse for them would be to approach the forums constituted under the Industrial Disputes Act. The maintainability of the writ petition was stoutly challenged. It is submitted that it is not correct to state that the fourth respondent denied the first respondent-Union a fair opportunity. According to them, several crucial factors have been suppressed in the affidavit filed in support of the writ petition, and if the said facts had been considered by the learned single Judge, the interim stay would not have been granted. Above all, it was submitted that the writ petition itself was not maintainable and the first respondent ought to have sought for a reference and raised an industrial dispute.

7. On behalf of the fifth respondent-Union, it was submitted that the settlement arrived at was fair and reasonable. It is submitted that the workmen, who had not received a pie for well over a decade, had accepted the settlement and by the order of stay, the workmen would be denied the benefits of the settlement that had been entered into between the Management and the Union. According to them, the splinter Union had no right to thwart the entire process.

8. Heard Mr.Jatinder Sethi, learned Senior Counsel appearing for the appellants, Mr.N.G.R.Prasad, learned counsel for the first respondent-Union, Mr.V.Raghupathi, learned Government Pleader for respondents 2 and 3, Mr.AR.L.Sundaresan, learned Senior Counsel for the fifth respondent-Union and Mr.N.R.Chandran, learned Senior Counsel for the Bank.

9. The learned single Judge continued the stay on the ground that the writ petition having been admitted, stay should necessarily be granted; otherwise, the writ petition would become infructuous and also because a prima facie case had been made out by the first respondent, who was the writ petitioner, for the grant of stay.

10. We will now consider the main grounds raised by the first respondent/writ petitioner to support their case for stay.

11. According to the first respondent, the impugned settlement was not brought about with the assistance of the fourth respondent, since the fourth respondent merely put his stamp on an agreement that was before him without independently considering whether the settlement was in the best interest of the workmen. To support this ground, we were asked to compare the terms of the 12(3) settlement and the 18(1) settlement, which would show that one was the verbatim reproduction of the other. The judgment in 1983 (I) L.L.J. 181 [Britannia Biscuit Co. Ltd. Employees' Union vs. Assistant Commissioner of Labour] was relied upon, which was confirmed by the

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Division Bench, wherein the learned single Judge had held that if the Conciliation Officer had not assisted in the arrival of a settlement and had been guilty of colourable exercise of power, the writ petition would be maintainable.

12. We have seen the impugned settlement under Section 18(1) and it is seen from paragraph (P) thereof that the first respondent-Union was given an opportunity. Since they were not present before the BIFR and AAIFR, they were given time to produce their records and the matter was adjourned to 26.12.2005 and on their request, the meeting was again postponed to 30.12.2005, on which date, their objections were received. It is recorded that on 18.1.2006, at the meeting held before the fourth respondent, the differences and disputes had been resolved, and in view of the fact that the fifth respondent-Union is a recognized Union, having majority of workers and considering "the settlement as fair and reasonable", the settlement was signed under Section 12(3) of the Industrial Disputes Act. Therefore, from the records, it is not possible for us to arrive at a conclusion that the fourth respondent did not independently apply his mind to the fairness and reasonableness of the settlement or that he denied opportunity to the Unions, the interest of whose members had been taken into account.

13. The next ground raised on behalf of the first respondent-Union is that the provisions of Section 25-O of the Act were not complied with. Reliance was placed on (2005) 3 S.C.C. 224 [Oswal Agro Furane Ltd. vs. Oswar Agro Furane Workers' Union]. The Supreme Court, on the facts of that case, held that since the appellant-Management had not applied for permission under Section 25-O of the Act, which was imperative in character, the closure of the undertaking on the basis of the settlement arrived at with the workers was illegal. This objection also cannot be sustained, since even the learned single Judge had found on facts that the appellant/Unit would be regarded as an on-going Unit even during its sale or disposal :

> "A bare reading of the said clause clearly establishes the fact that if the Unit is not possible to be reopened, then the disposal of plant, machinery, equipments, other moveable and non-moveable assets is permissible subject to protection of legal dues of workmen of the Unit in case of disposal or protection of the employment of the workmen in the event of sale to an acquiring party as an on-going Unit with its liabilities, under the framework of the scheme. Therefore, even during sale or disposal of the Unit, it should be treated only as an on-going Unit by the AAIFR."

Mr. N.G.R. Prasad would, however, contend that in effect, there was a closure and it would be incorrect to hold that what was sold was a running concern.

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14. The third objection raised was that the first respondent-Union was not given an opportunity. It was urged on behalf of the first respondent-Union that while it is true that the fourth respondent had called for their objections, thereafter, they were not informed that the conciliation proceedings would be held on 18.1.2006. The first respondent-Union had, in fact, moved a writ petition on 18.1.2006, but the settlement was signed with unseemly haste on the very same date. The fifth respondent-Union has produced the minutes of the joint general body meeting on 18.1.2006 and it is seen from the minutes recorded on that date as hereunder :

> "As per File No.E./9996/05, the Metal Box Workers' Union has not given consent to the above agreement during the conciliation held on 30.12.2005."

It was submitted on behalf of the Management that when on 30.12.2005 the first respondent-Union had given its objections and indicated categorically that it would not consent to sign the settlement, it cannot be aggrieved by the fact that it was not called for the conciliation proceedings held on 18.1.2006, since it was a foregone conclusion that they would not sign the settlement. Mr. N.G.R. Prasad, however, disputes this factual position and would submit that the first respondent-Union ought to have been called for the conciliation proceedings held on 18.1.2006. Therefore, prima facie, the third objection also deserves to be rejected.

15. The following decisions were cited by the learned counsel in support of their respective contentions :

1989 (II) L.L.N. 693 [Pudukottai Textiles Ltd. vs. Labour Court, Pudukottai]

1992 (II) L.L.J. 797 [Provisional Liquidator, Ramakrishna Industries (Pvt.) Ltd. Unit Jothi Mills & Official Liquidator, High Court vs. Workers of Jothi Mills, Assistant Commissioner of Labour, Coimbatore]

(2005) 12 S.C.C. 738 [ANZ Grindlays Bank Ltd. (now known as Standard Chartered Grindlays Bank Ltd. vs. Union of India)]

(2005) 8 S.C.C. 49 [State of Uttaranchal vs. Jagpal Singh Tyagi]

(2002) 3 S.C.C. 411 [I.T.C. Limited Workers' Welfare Association vs. Management of I.T.C. Limited]

(2000) 1 S.C.C. 371 [National Engineering Industries Ltd. vs. State of Rajasthan]

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(1994) 6 S.C.C. 145 [Ram Pukar Singh vs. Heavy Engineering Corporation]

(1991) 1 S.C.C. 4 [Barauni Refinery Pragatsheel Shramik Parishad vs. Indian Oil Corporation Limited]

(2005) 8 S.C.C. 51 [Jaihind Roadways vs. Maharashtra Rajya Mathadi Transport & General Kamgar Union]

(1997) 10 S.C.C. 565 [Workmen Employed in the Canteen in S.R.F. Limited vs. Government of Tamil Nadu]

2005 (2) C.T.C. 441 [K.Venkadasan vs. The Chairman-cum-Director, Neyveli Lignite Corporation]

2005 W.L.R. 310 [Tamil Nadu State Transport Corporation (Coimbatore Division - I) Ltd. vs. Rathinasamy]

W.P. No.44415 of 1999 dated 2.6.2000 [2000 (II) L.L.J. Karnataka High Court 1050 - Mysore Kirloskar Mazdoor Singh vs. Management of Mysore Kirloskar Ltd.]

W.P. No.3036 of 1998 dated 24.1.1991 [1995 (I) L.L.J. Bombay High Court 273 - Mumbai Shramik Sangh vs. N.D. Rathod, Conciliation Officer]

16. On behalf of the first respondent-Union, reliance was placed on a latest judgment of the Supreme Court in (2006) 2 S.C.C. 269 [L.K. Verma vs. H.M.T. Limited], where in paragraph 21, it was held as follows :

> "In any event, once a writ petition has been entertained and determined on merit of the matter, the appellate court, except in rare cases, would not interfere therewith only on the ground of existence of alternative remedy. (See Kanak vs. U.P. Avas Eva, Vikas Parisad - (2003) 7 S.C.C. 693). We, therefore, do not see any justification to hold that the High Court wrongly entertained the writ petition filed by the respondent."

That was a case where a judgment was given on merits by finally disposing the writ petition. Here, we are still at the interlocutory stage. We have already referred to the relevant materials available in this regard. It is not possible for us to come to the conclusion from these materials that there was no fair opportunity to the first respondent-Union or that there was no independent application of mind by the fourth respondent on the impugned settlement. Perhaps, the first respondent-Union may be able to establish the same before the Tribunal, where the factual controversies can be laid to rest, but

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not here, where we are dealing with a writ petition under Article 226 of the Constitution.

17. It is not possible for us to accept the submissions made by the learned counsel for the first respondent/Union that the mala fide nature of the impugned settlement, and the questions whether there was a closure or not and whether the first respondent was given a reasonable opportunity can be decided from the available materials and therefore, it is not necessary for the workmen to be driven to the Tribunal for establishing these issues. We have already seen that there are disputed questions of fact and therefore, we are inclined to accept the objection raised on behalf of the appellant that the writ petition itself is not maintainable and therefore, no interim order should have been granted.

18. Learned * counsel for the Writ Petitioner/First Respondent requested that a direction may be issued to the Government to refer the industrial dispute to the Industrial Tribunal and a time frame fixed for disposal of the same by the Tribunal. In view of the fact that the workmen have been fighting for their rights for over a decade, we think, in the interest of justice, it is appropriate to issue a direction to the Government to refer the dispute to the Industrial Tribunal.

19. For all these reasons, the interim stay granted by the learned single Judge is vacated; the writ appeals are allowed and the writ petition is disposed of with a direction to the second respondent-State Government to refer the dispute to the Industrial Tribunal within a period of six weeks from this date and the Tribunal to dispose of the industrial dispute within a period of four months thereafter. However, there will be no order as to costs. Consequently, W.A.M.P. No.885 and 886 of 2006 are closed.

ab

Sd/- 25.4.2006
Asst.Registrar

Corrected as per order
dated 27.4.2006

Sd/- 5.5.06
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government,
   Labour and Employment Department,
   Government of Tamil Nadu,
   Fort St. George, Chennai-9.

2. The Commissioner of Labour,
   Labour Welfare Building,
   D.M.S. Compound, Chennai-6.

   To be substituted to the order already despatched on 25.4.2006

3. The Registrar,
   The Board for Industrial and
   Financial Reconstruction,
   Jawahar Vyapar Bhavan,
   1, Tolstoy Marg, Janpat,
   New Delhi-110 001.

4. ICICI Bank Ltd., ICICI Towers,
   Bandra Kurla Complex
   Mumbai- 400 020.

+ one cc to Government Pleader Sr.No.19498.
+ one cc to Mr.K.M.Ramesh, Advocate Sr.No.19280.
+ two ccs to Mr.Niveditha, Advocate Sr.No.19271.

TEJ (CO)
RSM/25.4.2006

dv/9.5.06

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